5 May 1987. Yet, the plaintiff did not file a suit and apply for an injunction against the defendant until 24 November 1992, some five years after the order for sale. The only reason given by the plaintiff was that he did not know of the order for sale until he was informed of it on 31 July 1992 by a friend. I must say that this explanation is a very curious one indeed, bearing in mind that the plaintiff was close enough to his father to have been asked by him to settle his debt to the defendant. How could he not, in the circumstances, know that his father was summoned to attend the Collector's Inquiry or that the auction was delayed to give his father time to settle his debt. By his own admission he was fully aware of the banking procedures, yet how could he not have queried the defendant on the fate of the land after he had made payment to the defendant as claimed by him? In short, the plaintiff's explanation for the delay was far from satisfactory.

In *Cocoa Processors Sdn. Bhd. v. United Malayan Banking Corporation Bhd. & Ors.* [1988] 3 MLJ 491, it was held that a delay of eleven months without a satisfactory explanation did not entitle the plaintiff to the assistance of the Court.

Similarly here, the delay of over five years would be another ground for my refusing the injunction.

For the reasons stated above, the application is dismissed with costs.

JAYAGOPAL A/L ADAIKKALAM

v.

SUBRAMANIAM A/L MUTHUSAMY & 2 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN HJ. MOHD NOOR BIN HJ. ABDULLAH J.
[ORIGINATING SUMMONS NO. 24-810-93]
19 FEBRUARY 1994

PRACTICE & PROCEDURE: Plaintiff's application for directions, interim injunction and declaration - Defendants raising preliminary objections - Plaintiff's action commenced by originating summons - Whether action should have been commenced by writ of summons - Whether plaintiff had the locus standi to bring the action - Plaintiff obtaining interim injunction by summons in chambers - Plaintiff failing to give undertaking as to damages in the order granting interim injunction - Whether order void - Plaintiff member of society - Whether plaintiff had to exhaust his domestic remedies before seeking relief from the Court.

SOCIETIES: Plaintiff member of society - Plaintiff alleging management committee unlawful as defendants failed to hold annual general meeting of society according to its rules - Allegation of mismanagement and misappropriation of society's funds - Refusal to accept renewal of plaintiff's membership - Application of the principles applicable to trade unions and political parties to a society - Consideration of s. 45 of the Trade Union Ordinance 1959 - Section 49 of the Co-operative Society Ordinance 1948 - Section 40 Societies Act 1966.

The plaintiff was an ordinary member and the defendants were the chairman and secretary respectively of the management committee of the Sri Maha Mariamman Devasthanam Temple, Alor Setar (the Society). The plaintiff applied by originating summons for *inter alia* an interim injunction restraining the management committee from managing or administering the temple and for a direction that the management committee hand over the administration of the temple to the trustees. The plaintiff further applied for a declaration that the management committee was unlawful on the basis that the defendants had failed to hold the annual general meeting in accordance with the rules of the Society and also alleged *inter alia* that the defendants mismanaged the Society, had

misappropriated funds of the Society and had refused to accept renewal of his membership.

The plaintiff obtained the said interim injunction, direction and declaration on 4 November 1993 by way of a summons-in-chambers but upon the originating summons coming up for hearing, the defendants raised preliminary objections; namely, that the action should have been commenced by writ of summons, that the plaintiff had no *locus standi*, that the order granting the interim injunction was void for want of an undertaking as to damages and that the plaintifff had failed to exhaust his domestic remedies before seeking relief from the Court.

Held:

[1] With regard to the first objection the Court was prepared to treat the originating summons as though it was commenced by a writ of summons. The Court found no merit in the second objection as it was satisfied that the defendants had probably refused to accept the plaintiff's application to renew his membership. With regard to the third objection, the omission of an undertaking as to damages in the circumstances of the case did not invalidate the order of the Court.

[2] The fourth objection was sustainable upon the Court's own assumption that the principle applicable in such a matter to a political party and trade unions also applied to a society, in that; where the parties to a dispute were required by statute to resolve the dispute in a specified manner and until the dispute was resolved in that manner the Court was not empowered to adjudicate except by way of case stated. Such disputes between the plaintiff and defendants should be decided in the manner directed by the rules of the Society or otherwise referred to the Registrar of Societies by consent of the parties to the dispute as provided for by s. 40 of the Societies Act 1966 (Revised 1987).

[3] The plaintiff had not taken his complaint to the Society by convening a special general meeting on the written request of not less than 25 members as was provided under r. 10 of the rules of the Society. As the plaintiff had not exhausted his domestic remedies before commencing judicial proceedings, the Court dismissed his various applications with costs under the originating summons with the effect that the interim injunction and other reliefs obtained by him under the summons-in-chambers in the related matter became void and of no effect.

[Plaintiff's application dismissed with costs].

Cases referred to:

Kolandaisamy v. Annamalai & The Harbour Trade Union (Selangor) Port Swettenham, [1968] 1 MLJ 222 ***(foll)***

Muthukaru v. Kuala Lumpur Municipality Workers Trade Union [1972] 1 MLJ 165 ***(foll)***

Subramaniam v. Tan Lee Leng & Ors. [1980] 1 MLJ 171 ***(foll)***

Professor Dr. A. Kahar Badar & Ors. v. N. Krishnan & Ors. [1983] 1 MLJ 407 ***(foll)***

Legislation referred to:

Co-operative Society Ordinance 1948, s. 49
Societies Act 1966, s. 40
Trade Union Ordinance 1959, s. 45

For the plaintiff - In person
For the first and second defendant - Maikal Yasu; M/s. Maikal Yasu
For the third defendant - Abdul Hamid bin Embong, Assistant Registrar of Societies

JUDGMENT

Hj. Mohd Noor bin Hj. Abdullah J:

The plaintiff is an ordinary member, and defendants are chairman and secretary respectively of the management committee of the Sri Maha Mariamman Devasthanam Temple, Bakar Bata, Alor Setar (the Society).

By an originating summons the plaintiff applied *inter alia* for an interim injunction restraining the management committee from managing or administering the temple and for a direction that the management committee hand over the administration of the temple to the trustees. The plaintiff further applied for a declaration that the management committee is unlawful.

In support of the application the plaintiff alleged that the defendants did not hold the annual general meeting of the society according to its rules and therefore the management committee of which the defendant 1 is the chairman and defendant 2 the secretary is unlawful. Plaintiff further alleged that the defendants mismanaged the society: they misappropriated the society's fund, they sold the society's houses without authorisation and they contracted building works in breach of the plan and specification approved by the local authority.

By a summons-in-chambers plaintiff obtained the above interim injunction, declaration and direction on 4 November 1993

This matter came up before me on 19 February 1994 when the originating summons was scheduled for hearing in chambers. The learned Counsel for defendant 1 and defendant 2 raised preliminary objections. The plaintiff appeared in person. The objections were briefly as follows: that the action should have been commenced by a writ of summons and not by an originating summons, that the plaintiff had no *locus standi*, that the order granting interlocutory injunction was void because there was no undertaking as to damages and finally that the plaintiff failed to exhaust his domestic remedies before seeking relief of the Court. With regard to the first objection I was prepared under the circumstances to treat the originating summons as though it was commenced by a writ of summons. I found no merits in the second objection as I was satisfied that the defendants more probably refused to accept the plaintiff's application to renew his membership. With regard to the third objection the omission of an undertaking as to damages in the circumstances of the case did not invalidate the order of the Court. I found the fourth objection sustainable not because the learned Counsel supported his contention by reference to authorities but rather acting on my own assumption that the principle applicable in such matter to a political party and trade unions applies also to a society.

The defendant's objection may properly be restated thus: that the judicial proceeding commenced by the plaintiff against the defendant were premature and should not therefore be entertained by the Court.

In *Kolandaisamy v. Annamalai & The Harbour Trade Union (Selangor) Port Swettenham* [1968] 1 MLJ 222 where the plaintiff, claiming that he had been and was still a member of the union, sought in this action a declaration that the election of the members of the executive council of the union was null and void and an injunction to restrain the said executive council and everybody thereof from acting in such capacity. Gill J., on a preliminary point taken by the defendant whether the Court has jurisdiction to hear and adjudicate upon the matter held that as the rules of the union provided that any dispute between a member and the union should be decided by reference to arbitration the only way in which such dispute would come before the Court was by way of a case stated for its opinion on any question of law as provided under s. 45 of the Trade Union Ordinance. Therefore in this case the Court has no jurisdiction to hear and adjudicate.

In *Muthukaru v. Kuala Lumpur Municipality Workers Trade Union* [1972] 1 MLJ 165 the plaintiff, who is the president of the defendant union, sought for a declaration that an emergency meeting of the union had no power to decide matters pertaining to the election of officers of the said union, and for an injunction restraining the union from proceeding to hold a general meeting on a certain date or from convening or holding any other general meeting. The plaintiff obtained an injunction. The defendant union applied to set aside the interlocutory injunction and all subsequent proceeding on the ground that the Court had no jurisdiction to entertain the plaintiff's claim.

Raja Azlan Shah J. held, allowing the application:

> (1) when a statute creates an obligation and enforces the performance in a specified manner, that performance cannot be enforced in any other manner;
> (2) although there was clearly a dispute regarding the election of officers, the Court is not empowered to adjudicate over the matter until the procedure for resolving a dispute has been exhausted;
> (3) the procedure by which a Court has jurisdiction is by way of a case stated under the provisions of s. 45 of the Trade Union Ordinance 1959.

The above cases related to unions where the parties to a dispute is required by statute to resolve the dispute in a specified manner and until the dispute is resolved in that manner the Court is not empowered to adjudicate except by way of case stated.

In *Subramaniam v. Tan Lee Leng & Ors.* [1980] 1 MLJ 171 - a dispute relating to co-operative society - Salleh Abas FJ said:

> There is no need for me to refer to any authorities to decide this case as I take it that the law on this matter is very clear, in that the Court will not entertain any judicial proceedings where remedies provided for by statute have not been complied with.

In this case it was argued by Counsel for the defendant that the judicial proceedings taken by the plaintiff were premature and should not therefore be entertained by the Court. The learned Judge noted that there was sufficient compliance with statutory requirement and

hence he dismissed the defendants application to set aside the writ of summons.

In *Professor Dr. A. Kahar Badar & Ors. v. N. Krishnan & Ors.* [1983] 1 MLJ 407 - a dispute relating to a co-operative society - the defendant applied to set aside an interlocutory injunction on the ground that there is a dispute among the members of the society or between certain members and the committee of management of the society and in view of the provision of s. 49 of the Co-operative Society Ordinance 1948 relating to any dispute (touching the business of a registered society) the issue of the writ and the application for the interlocutory injunction were premature as the remedies provided by the statute have not been exhausted.

Hashim Yeop A. Sani J. dismissed the application to set aside the interlocutory injunction and allowed it to continue until the trial of the suit. The reason for such dismissal was not founded on failure to exhaust statutory remedies but for a defined issue. However it is observed from the facts of the case that the plaintiffs were elected as members of the co-operative society at the society's annual general meeting. It was disclosed that the defendant had given notice before the AGM that he would raise questions relating to alleged misappropriation of the society's fund and that a vote of no confidence was passed against the committee of management, that a resolution was passed at the meeting and that the management of the society be handed over to the Ministry of Rural Development pending investigation of the misappropriation.

Now the case before me relates to a society - The Sri Maha Mariamman Devasthanam Society. Its object is to organise religious festival, to manage the Hindu burial ground and to maintain the Maha Mariamman Temple. The society is managed by a management committee of 13 members elected at the annual general meeting. The plaintiff alleged that the society had not held its annual general meeting according to the rules of the society. He complained that the defendants refused to accept renewal of his membership. Such like disputes should be decided in the manner directed by the rules of the Society or otherwise by consent of the parties to the dispute, refer such dispute to the Registrar of Societies. This is provided for under s. 40 of the Societies Act 1966 (Revised 1987). The plaintiff had not taken his complaint to the Society by convening a special general meeting on the written request of not less than 25 members as is provided under r. 10 of the rules of the Society. I am of the view, that the plaintiff should first seek his remedy under the rules of the Society or under the Societies Act or both before he commenced judicial proceedings and as the plaintiff had not exhausted his remedies thereunder, I dismissed his various applications with cost under the originating summons with the effect that the interim injunction and other reliefs which he had obtained under the summons-in-chambers in the same related action became void and of no effect.